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Sen. Ryan Mishler  
Sen. Beverly Gard  
Sen. Ed Charbonneau  
Sen. Dennis Kruse  
Sen. Sue Landske  
Sen. James Merritt  
Sen. Sue Errington  
Sen. Jean Breaux  
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Rep. Paul Robertson  
Rep. Dan Stevenson  
Rep. Jack Lutz  
Rep. Robert Behning  
Rep. David Frizzell  
Rep. Timothy Neese  
Rep. Ed Soliday



## REGULATORY FLEXIBILITY COMMITTEE

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Authority: IC 8-1-2.5-9

### MEETING MINUTES<sup>1</sup>

Meeting Date: October 9, 2008  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington  
St., House Chamber  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Sen. Brandt Hershman, Co-Chairperson; Sen. Ryan Mishler; Sen. Beverly Gard; Sen. Ed Charbonneau; Sen. Dennis Kruse; Sen. James Merritt; Sen. Sue Errington; Sen. Jean Breaux; Rep. Kreg Battles; Rep. Chester Dobis; Rep. Paul Robertson; Rep. Dan Stevenson; Rep. Jack Lutz; Rep. Robert Behning; Rep. David Frizzell; Rep. Ed Soliday.

**Members Absent:** Sen. Sue Landske; Sen. Earline Rogers; Sen. Karen Tallian; Rep. David Crooks, Co-Chairperson; Rep. Sandra Blanton; Rep. Ryan Dvorak; Rep. Timothy Neese.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Senator Brandt Hershman, Co-Chairman of the Regulatory Flexibility Committee, convened the meeting at 10:05 a.m. Senator Hershman announced that the meeting's agenda would include a discussion of the following: (1) 211 services in Indiana; (2) tree trimming practices by Indiana utilities; (3) the potential regulation of wind power in Indiana; and (4) energy policy options for Indiana.

### **(1) Human Services Information and Referral Services (211 Services):**

#### Treasurer of State Richard Mourdock:

Senator Hershman invited Treasurer of State Richard Mourdock to address the Committee concerning 211 services<sup>2</sup> in Indiana. While acknowledging that the provision and funding of 211 services were the focus of the Committee's inquiry, Treasurer Mourdock began by expressing his support for the required consolidation of public safety answering points (PSAPs)<sup>3</sup> under HEA 1204 (2008). Treasurer Mourdock explained that with the enactment of that law, not more than two PSAPs may serve any one county beginning January 1, 2015. He suggested that the required consolidations will result in the more efficient delivery of emergency response services and significant cost savings, which can be redirected to improving the reliability and reach of Indiana's enhanced emergency communications infrastructure.

Treasurer Mourdock reminded Committee members that Indiana's wireless enhanced 911 service is funded through a monthly \$0.50 fee that is imposed statewide on each wireless phone customer in Indiana. By virtue of his office, Treasurer Mourdock serves as Chairman of the Wireless Enhanced 911 Advisory Board, which is responsible for monitoring wireless 911 service in Indiana, including the collection, disbursement, and use of the statewide wireless enhanced 911 fees. Speaking as Chairman of the Advisory Board, Treasurer Mourdock advised legislators not to designate any of the funds collected through the imposition of the statewide wireless 911 fee for use in supporting 211 services in Indiana. While acknowledging the value of the human services referrals available through the 211 dialing code, Treasurer Mourdock argued that the wireless enhanced 911 fees should remain dedicated to improving the reliability and availability of Indiana's emergency communications infrastructure.

Treasurer Mourdock then introduced Ken Lowden, Executive Director of the Wireless Enhanced 911 Advisory Board. Mr. Lowden distributed a summary<sup>4</sup> of the results of a survey he conducted to determine how other states fund 211 services. According to Mr. Lowden, none of the states in which 211 services are available use 911 fees or funds to

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<sup>2</sup>The Federal Communications Commission has designated "211" as the abbreviated dialing code for telephone service providing access to human services information and referrals. IC 8-1-19.5, enacted in 2004, established the framework for the delivery of 211 services in Indiana and created the 211 Services Account within the State General. The Account is administered by the Indiana Utility Regulatory Commission and consists of any funds appropriated by the General Assembly or received from the federal government for the support of 211 services.

<sup>3</sup>A public safety answering point, or "PSAP," is a public safety agency that receives incoming 911 calls and dispatches appropriate public safety personnel to respond to the calls. (See IC 36-8-16.5-13.)

<sup>4</sup>See Exhibit 1.

support the 211 services. He also reported that none of the states surveyed impose a 211 fee or charge as a separate line item on customers' phone bills.

IURC Commissioner Larry Landis:

After Treasurer Mourdock concluded his remarks, the Committee heard from Commissioner Larry Landis of the Indiana Utility Regulatory Commission (IURC). Commissioner Landis gave a history of the development of 211 services nationwide and in Indiana and discussed the IURC's role with respect to those services.<sup>5</sup> Commissioner Landis explained that in 2000, the Federal Communications Commission (FCC) issued an order assigning "211" as the three-digit, abbreviated dialing code for telephone users to access human services information and referrals. According to Commissioner Landis, the FCC's order was intended to facilitate the implementation of human services referral systems at the state level, with each state providing a statewide, seamless network of "one stop" information and referral services accessible to residents through the 211 dialing code.

In response to the FCC's order, Indiana 211 Partnership, Inc. (IN211) was formed in November 2000. Organized as a nonprofit corporation, IN211 is a coalition of over 30 general social services clearinghouses (e.g., local United Way organizations), child care referral organizations, area agencies on aging, other community service organizations, and governmental agencies. On June 17, 2004, the IURC issued an order recognizing IN211 as the proper administrator of 211 services and the only party authorized by the IURC to use the 211 dialing code. The IURC's order also contained provisions concerning the dissemination of information about 211 services and requiring IN211 to periodically report to the IURC.

Commissioner Landis then described the enactment of HEA 1344 (2004), which encourages the use and support of 211 services in Indiana. Codified at IC 8-1-19.5, the law prohibits any state agency that provides human services from establishing a public telephone line or hotline to provide information or referrals unless the agency first consults with the recognized 211 service provider (i.e., IN211) about using 211 to provide access to the information or referrals sought to be provided.<sup>6</sup> The law also prohibits any person from disseminating information to the public about the availability of 211 services in an area of Indiana except in accordance with a rule or order adopted or issued by the IURC.<sup>7</sup>

With respect to the funding of 211 services in Indiana, Commissioner Landis noted that HEA 1344 (2004) established the 211 Services Account in the State General Fund to receive anticipated funding from the General Assembly and the federal government.<sup>8</sup> Administered by the IURC, the Account has never been funded. Instead, IN211 has been funded to date entirely by private, philanthropic, and social services organizations.

Commissioner Landis concluded his presentation by reporting that as of April 2008, 211 service was available in 67 of Indiana's 92 counties, which translates into coverage for about 85% of Indiana residents. Commissioner Landis further noted that HEA 1279

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<sup>5</sup>See Exhibit 2.

<sup>6</sup>See IC 8-1-19.5-9(b).

<sup>7</sup>See IC 8-1-19.5-9(c).

<sup>8</sup>See IC 8-1-19.5-11.

(2006), which greatly reduced the IURC's jurisdiction over communications services, explicitly preserved the IURC's duties with respect to the administration of the 211 dialing code in Indiana.<sup>9</sup>

Lucinda Nord:

After Commissioner Landis' briefing on the history of 211, Senator Hershman invited Lucinda Nord to address the current and future status of 211 services in Indiana.<sup>10</sup> Ms. Nord, Vice President of Public Policy for the Indiana Association of United Ways, reported that in 2007, IN211's fifteen call centers served 273,480 callers and provided 395,371 referrals to human services organizations. According to Ms. Nord, Indiana's 211 system has been recognized as a model nationally, because it combines centralized administrative functions with the local delivery of services. IN211 also provides for after-hours assistance at all times, as well as backup assistance and system redundancies to ensure 211 services are available during emergencies. Ms. Nord pointed out that when several northern Indiana counties experienced flooding in September 2008, 211 information and referral specialists served as a complement to 911 emergency services by managing information about available services and organizing volunteers, cash donations, and in-kind contributions.

Despite the efficiencies in Indiana's 211 system, Ms. Nord reported that IN211 and its 15 call centers face significant operating challenges. For example, as new service providers enter Indiana's telecommunications market, IN211 has had to identify and contact the providers to ensure that they enable 211 calling capability as part of their basic service packages to customers. As new communications technologies have emerged, this has placed a substantial burden on IN211. Ms. Nord noted that in the organization's annual report to the IURC, IN211 suggested that the responsibility for ensuring appropriate 211 access and routing should be placed on the service providers themselves.

In addition, the absence of state funding for 211 has made it increasingly difficult to continue providing services at the current level, and has made it nearly impossible to undertake the needed expansion of service to ensure coverage for all Indiana residents. Even in those counties in which 211 service is currently available, the public's awareness of such service varies widely, because there is little money available in IN211's budget for promotional efforts or public awareness campaigns.

Because IN211 is committed to continuing to ensure that 211 calls can be placed at no additional charge to the caller, raising needed funds by imposing a per-call charge is not an option, according to Ms. Nord. (Callers are currently able to place 211 calls from landline telephones at no more than the cost of a local phone call. For calls made from mobile phones, normal usage costs per minute apply according to a caller's particular mobile plan.) However, national studies have shown that to operate a 211 system it costs approximately \$1.00 to \$1.50 per person annually for the area served. In Indiana, this means that operating a statewide 211 system would require approximately \$6.3 million to \$9.6 million annually. Ms. Nord noted that IN211 and its 15 call centers raise and spend approximately \$3.5 million each year to operate Indiana's existing 211 system. Because this amount falls significantly short of the level needed to maintain a statewide 211 system, Ms. Nord requested that the legislature appropriate \$9.5 million over the next biennium for 211 services in Indiana. She pointed out that over two years, such an appropriation would

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<sup>9</sup>See IC 8-1-2.6-13(d)(3).

<sup>10</sup>See Exhibit 3.

still cover less than half of the annual required operating budget for statewide 211.

Ms. Nord further noted that 23 states offer 211 services statewide. Most of those states do so with substantial financial support from state government. Other states allocate to their 211 systems funds they receive from certain federal programs or grants, such as Community Development Block Grant funds, workforce development grants, Temporary Assistance for Needy Families (TANF) funds, and money received from the Department of Homeland Security or the Department of Justice. Ms. Nord suggested that Indiana could similarly direct some of its federal dollars to supporting statewide 211. She also offered another approach in which state agencies would contribute part of their annual budgets to IN211 based on their "fair share" of the types of calls received statewide by 211 centers. For example, in 2007, 19% of calls to 211 centers involved requests for housing-related assistance. Under a proportionate contribution scheme, 19% of the state contribution for the following year would come from the budget of an agency that provides housing assistance, such as the Indiana Housing and Community Development Authority. Ms. Nord suggested that such a scheme could actually result in savings to certain agencies if those agencies simultaneously eliminated their own hotlines that provide information and referral services.

After Ms. Nord concluded her remarks, Representative Frizzell asked how much customers' local phone bills would increase should statewide 211 coverage become available. Ms. Nord clarified that IN211 was not seeking permission to include a 211 fee as a line item on customers' phone bills, such as those used to fund landline and wireless 911 services. In response to Treasurer Mourdock's earlier request that legislators not direct any 911 fees to funding statewide 211 service, Ms. Nord further clarified that IN211 was not seeking access to any 911 funds. Rather, IN211 is requesting an appropriation in the next biennial state budget to help fund part of the costs to provide 211 services to Indiana citizens.

## **(2) Tree Trimming Practices by Indiana Utilities:**

Charlie Goodman:

Turning the Committee's attention to the next topic on the agenda, Senator Hershman invited Senator Breaux to introduce Charlie Goodman, a citizen activist who has led efforts in recent years to organize homeowners who have objected to the tree trimming practices of certain utilities. Senator Breaux thanked the Chairman for the opportunity to bring the issue before the Committee. Noting that she was not proposing that the state adopt laws or administrative rules to regulate utilities' tree trimming activities, Senator Breaux suggested that the state could instead develop tree trimming guidelines that could be incorporated into the practices of individual utilities. As a model for such an approach, Senator Breaux cited SEA 529 (2007), which required the IURC to adopt guidelines governing the construction of interstate pipelines in Indiana. Senator Breaux recommended that any similar framework for tree trimming practices incorporate a dispute resolution process for homeowners and utilities. She then introduced Charlie Goodman, who indicated that he would be calling upon several different homeowners and neighborhood leaders to describe their experiences with the tree trimming practices of Indianapolis Power & Light (IPL).

After Mr. Goodman's opening remarks, Senator Hershman asked Mr. Goodman's invited guests to delay their remarks to allow Representative David Wolkins to briefly address the Committee about his own experience as a homeowner whose property was targeted for tree trimming.

Representative David Wolkins:

Representative David Wolkins explained that he recently had a dispute with the Northern Indiana Public Service Company (NIPSCO) concerning the company's lack of care in trimming a large elm tree on his property. According to Representative Wolkins, in this case, NIPSCO had tree trimming guidelines in place, but the contractors who performed the work failed to follow those procedures. Representative Wolkins expressed frustration by the lack of accountability when utilities use contractors instead of their own staff to perform the work. For example, the company that NIPSCO hired to trim the trees on his property claimed to have no knowledge of the tree trimming standards NIPSCO had adopted.

Representative Wolkins told the Committee that he was open to suggestions for ways to ensure that utilities remain accountable to homeowners in adhering to certain standards when trimming trees on private property. He emphasized that he was not suggesting that the Committee recommend additional regulations for utilities. Rather, he suggested that there should be some type of mechanism in place to ensure that utilities at least follow their own established procedures.

Senator Breaux asked whether Representative Wolkins would be in favor of the IURC having some type of oversight over utilities' tree trimming practices. Representative Wolkins said that he would not be opposed to that concept, as long as it could be done using the IURC's existing resources. He noted that it was not his intention to create new layers of bureaucracy or additional costs to the state.

Testimony by Homeowners:

Following Representative Wolkin's testimony, Senator Hershman returned to Mr. Goodman's assembled guests invited them to individually address the Committee.<sup>11</sup>

Jerry Baker introduced himself as a resident of the northwest side of Indianapolis, in the Trader's Point neighborhood located near the intersection of 86th Street and Lafayette Road. Although his own property was not affected, Mr. Baker described the decrease in property values that occurred in his neighborhood after IPL performed extensive tree trimming in the area in 2005. He told the Committee that IPL had not obtained any easements to enter his neighbors' property to perform the work.

Senator Breaux asked whether Mr. Baker believed that IPL had the right to enter onto private property to ensure that trees are not impinging on its electric lines. Mr. Baker replied that on some occasions it is appropriate for a utility to enter private property and perform necessary trimming. However, he stated that he does object to unnecessary or excessive clearing by utilities. He maintained that utilities trim back trees more than is necessary so that they do not have to return to a given property as often. Property owners, meanwhile, experience decreased property values when trees that provide shade or aesthetic value are removed or significantly altered.

Next, Jeanne Girtz described the 2002 dispute between residents of her neighborhood on Indianapolis' north side and IPL concerning IPL's tree trimming practices. In response to a class action lawsuit filed in connection with the dispute, IPL adopted "Project

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<sup>11</sup>See Exhibit 4.

Cooperation,"<sup>12</sup> a tree trimming policy that provided for certain notification to homeowners before scheduled prunings and allowed homeowners to request specified alternative measures, such as the burying of affected electric lines, at the homeowner's expense. However, Ms. Gertz complained that IPL has been inconsistent in complying with this policy in subsequent scheduled trimmings. She further complained that in its dealings with objecting homeowners, IPL has claimed that it is powerless to modify its practices due to mandates by the federal government requiring it to keep its lines clear from trees and other vegetation. According to Ms. Gertz, IPL has used these mandates as a "hammer" in negotiations with homeowners. She suggested that IPL is actually more concerned about preserving its bottom line than complying with federal requirements.

Pat Easterday, another resident of the Trader's Point neighborhood on Indianapolis' northwest side, recounted a physical altercation that ensued when IPL removed several trees on her property a few years ago. Ms. Easterday was home at the time the work was being performed and noticed that the workers were removing even small trees and shrubs from her property, including several lilac bushes. Ms. Easterday approached one of the workers and demanded that the work be stopped and that she be allowed to talk to an IPL representative. When the worker ignored her request, Ms. Easterday confronted him again in what she described as a "boisterous" manner and attempted to get his attention by poking her finger on his shoulder. She reported that soon afterward she was handcuffed by a police officer at the scene and thrown onto the hood of a nearby police car. When IPL indicated that it did not wish to press charges against her, the police officer ordered her to stay in her house until the work on her property was completed. Noting that she was of retirement age and petite in stature, Ms. Easterday complained that IPL and the police should not be allowed to treat concerned homeowners in such a forceful manner.

After Ms. Easterday concluded her testimony, Senator Hershman, while acknowledging Ms. Easterday's concerns, reminded those assembled that the Committee has no jurisdiction over the actions or policies of law enforcement agencies.

Next, Tom Glass, a resident of Indianapolis' west side and a representative of the Marion County Alliance of Neighborhood Associations, circulated to Committee members photographs showing scenes of trees before and after IPL's tree trimming activities in his neighborhood. He noted that the problem of excessive tree trimming by utilities is not confined to Indianapolis. He reported that in his travels across the state, he has observed a similar phenomenon in neighborhoods in other cities and towns. Mr. Glass expressed support for legislation championed by Mr. Goodman to add to and codify in statute the tree trimming standards to which IPL agreed to adhere as part of Project Cooperation.<sup>13</sup>

Kathy Church, a resident of the Driftwood Hills neighborhood that was involved with the negotiations with IPL that led to Project Cooperation, explained that she was appearing before the Committee on behalf of her daughter, a resident of the Sylvan Hills neighborhood in Indianapolis.<sup>14</sup> Ms. Church described how her daughter had received a notice from IPL in 2006 about proposed tree trimming on her property. In accordance with the policies established under Project Cooperation, the notice informed Ms. Church's daughter that she had the right to request an on-site meeting with an IPL representative to

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<sup>12</sup>See Exhibit 5.

<sup>13</sup>See Exhibit 6.

<sup>14</sup>See Exhibit 7.

discuss the proposed work. Ms. Church's daughter contacted the number listed on the notice to request such a meeting. After leaving several messages, she received no response from IPL. Ms. Church's daughter happened to be home when IPL's contractor arrived several weeks later and began trimming her trees. She was able to convince the workers to delay the tree trimming and eventually received a site visit from an IPL representative. However, that representative would not agree to any concessions with respect to a pine tree that, years earlier, IPL's own arborist had indicated was slow-growing and did not need to be cleared to the main trunk line. After this unfruitful meeting, IPL's contractor later returned and severely trimmed the pine tree. At the time, IPL indicated that because the tree's branches had been cut to the trunk line, it would not need to trim the tree again in the future. Despite these assurances, IPL returned to the property in the spring of 2008 and further trimmed branches that grew below those removed in 2006.

After sharing her daughter's story, Ms. Church argued that the incidents that she and the other speakers described were proof that IPL has ignored the standards that it agreed to follow as part of Project Cooperation. She suggested that homeowners should have the ability to contact a neutral party to intervene before a scheduled tree trimming.

Caroline Farrar, Executive Director of the Meridian-Kessler Neighborhood Association, recounted how her neighborhood first encountered problems with excessive trimming by IPL in 2001.<sup>15</sup> After fielding numerous complaints from residents, the Association hosted a series of community meetings between neighborhood residents and representatives of IPL, the Wright Tree Company (IPL's contractor), the City of Indianapolis, and what was at the time the Indianapolis Police Department. Ms. Farrar reported that productive dialogue occurred at those meetings, and, as a result, IPL agreed to better communicate with residents about planned trimmings and to provide certain options to homeowners whose trees were subject to trimming. However, despite these assurances by IPL, the problems recurred with subsequent trimmings. Today, residents of the Meridian-Kessler neighborhood continue to arrive home from work to find that their trees have been topped or severely cut on one side, leaving what is essentially half of a tree. Ms. Farrar urged legislators to take action to help solve this continuing problem, whether by enforcing the terms of Project Cooperation, establishing minimum state regulations, or ensuring that IPL adheres to a species-appropriate tree replacement program.

Stephanie Dawson, a Trader's Point resident, discussed the aesthetic and environmental benefits of trees to neighborhoods and communities. Noting that she has lived in her home since 1972, she also described how certain trees on her property had been planted to commemorate significant events in her family's life.

Julie Griffin, a resident of Indianapolis' north side, stated that she could relate to Representative Wolkin's complaint about utilities failing to follow their own tree trimming policies. She described how she had attempted consult with an IPL representative after receiving a tree trimming notice in 2005. Although she followed the procedures set forth in IPL's notice, she had trouble getting anyone from IPL to communicate with her. She complained that homeowners had no recourse against IPL and argued that residents who attempt to hold the utility accountable face a "David versus Goliath" challenge.

Finally, Marianne Stevens, a Trader's Point resident, maintained that utilities should be held accountable for "butchering" trees in neighborhoods and for entering property outside their lawful easements.

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<sup>15</sup>See Exhibit 8.



Following the testimony by homeowners, Senator Hershman recessed the meeting at 12:30 p.m. He announced that the meeting would resume at 2:00 p.m.

Stephen R. Cieslewicz:

When the meeting resumed, Senator Hershman invited testimony from Stephen R. Cieslewicz, President of CN Utility Consulting, Inc.<sup>16</sup> Mr. Cieslewicz announced that he would be addressing "utility vegetation management," or "UVM" as the practice is known in the utility industry, from a national perspective. He explained that he has worked with utilities, arborists, and state and federal regulators to develop UVM standards, best management practices, and laws and regulations.

Mr. Cieslewicz reminded the Committee of the blackout in August 2003 that occurred when transmission lines owned by FirstEnergy in Ohio came into contact with tree limbs and triggered the shutdown of 21 power plants in the eastern United States and Canada. Following that incident, federal and state regulators conducted investigations and concluded that there should be mandatory electric reliability standards, including enforceable UVM standards. As a result, Congress enacted a law in 2005 that imposed certain minimum UVM standards. Enforcement of the law did not begin until 2007, to give utilities adequate time to comply. The law is administered by the North American Electric Reliability Corporation (NERC), under the jurisdiction of the Federal Energy Regulatory Commission (FERC). In June 2008, NERC issued the first two fines under the law, which totaled \$255,000. According to Mr. Cieslewicz, utilities found not to be in compliance with the standards can be fined up to \$1,000,000 per day.

Mr. Cieslewicz further explained that the federal rules apply only to high-voltage transmission lines, and not to distribution lines that deliver power into neighborhoods. The Energy Policy Act of 2005 specified that distribution lines remain subject to the jurisdiction of state utility regulators.

Mr. Cieslewicz noted that because of the federal regulations and the severe fines that can be imposed for noncompliance, utilities have been required to employ more aggressive UVM practices. He pointed out that the sentiment among homeowners that utilities have been unreasonable in their UVM practices is expressed nationwide. Mr. Cieslewicz attributed the discontent to homeowners' lack of understanding of industry standards for pruning practices. Stressing that utility pruning is not the same as ornamental pruning, he noted that most utilities follow the American National Standards Institute (ANSI) standards for pruning. While the ANSI standards were designed to ensure the least amount of damage to trees, the prescribed practices can nevertheless result in "non rounded" tree shapes. For example, ANSI A300 provides for "training" the growth pattern of trees located underneath overhead wires, which involves removing a portion of the center upper branches to accommodate the wires, resulting in trees taking on a "Y" shape. While this standard is recognized as the best practice scientifically, the resulting appearance is not pleasing to many homeowners.

Mr. Cieslewicz reported that in order to prevent future conflicts with homeowners, many utilities have adopted the "right tree for the right place" approach to replacing trees that must be removed because of their proximity to power lines. This approach involves replacing tall trees with low-growing species that are more manageable and present less risk of coming into contact with live wires. Mr. Cieslewicz suggested that if this practice had been followed decades ago, the current conflicts between utilities and homeowners

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<sup>16</sup>See Exhibit 9.

could have been avoided.

Senator Hershman asked whether Mr. Cieslewicz could recommend any particular UVM standards for Indiana utilities to adopt. Mr. Cieslewicz suggested that in addition to following the ANSI A300 pruning standards, utilities should consider seeking certification through the Tree Line USA program, which is administered by the Arbor Day Foundation and the National Association of State Foresters. To receive program certification, utilities must adopt specified pruning practices, provide annual training for workers and contractors who perform pruning, sponsor tree planting programs, and provide educational materials to homeowners.

Representative Frizzell asked what Indiana could do as a state to improve UVM practices and reduce the continuing conflicts between utilities and homeowners. Mr. Cieslewicz responded that he was hesitant to provide an answer, because UVM decisions are by their nature site-specific. He stressed that utilities must be able to base their practices on the particular situation and tree involved. Although reluctant to endorse state-imposed UVM standards, Mr. Cieslewicz did suggest that requiring compliance with the ANSI A300 pruning standards would be reasonable.

#### Ed Simcox:

Next, the Committee heard testimony from Ed Simcox, President of the Indiana Energy Association (IEA).<sup>17</sup> Mr. Simcox noted that many of the stories related by homeowners earlier in the meeting were dated, describing conflicts that occurred several years ago. He stressed that the events described did not reflect utilities' current practices. In the intervening years, utilities have adopted policies to provide earlier and more frequent notice to homeowners before line clearance work begins and have established quality control and customer complaint procedures.

Mr. Simcox further pointed out that the Committee did not hear from the thousands of people who call utilities to complain whenever a power outage occurs. Utilities' UVM practices are designed to prevent such outages, in addition to ensuring the safety of residents and utility workers. Mr. Simcox reported that among the IEA member utilities,<sup>18</sup> 20.2% of the power outages that have occurred since 2003 have been tree-related. For some individual utilities, the percentage of tree-related outages is even higher, reflecting the differences in landscapes between different service areas. For example, tree-related causes have accounted for 52% of IPL's outages in 2008.

Mr. Simcox echoed Mr. Cieslewicz's assertion that UVM decisions must be site-specific. He explained that how much a utility will cut at any particular site depends on the length of the utility's UVM cycle (i.e., the period of time between prunings), the health and species of the trees involved, and the voltage and construction of the power lines involved. He also advocated the "right tree for the right place" approach for selecting trees to be planted near or under power lines.

Senator Breaux asked whether there should be recourse for customers who feel that IPL is not complying with the standards it agreed to under Project Cooperation. Mr. Simcox

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<sup>17</sup>See Exhibit 10.

<sup>18</sup>The IEA's membership includes five investor-owned electric utilities: Duke Energy, Indiana Michigan Power (AEP), Indianapolis Power & Light Co. (AES), Northern Indiana Public Service Co., and Vectren Corporation.

responded that while no specific remedies were set forth in the agreement, a customer always has the right to file a complaint with the IURC because of IPL's status as a regulated utility.

Mr. Simcox concluded by noting that customers expect their electricity to be available under all circumstances, their electric rates to be as low as possible, and their property to remain undisturbed. According to Mr. Simcox, utilities face a considerable challenge in trying to satisfy these competing expectations. Utilities must balance individual customers' rights to the enjoyment of trees with the requirement of providing safe and reliable power to an entire community.

Maureen Ferguson:

After Mr. Simcox's presentation on behalf of Indiana's investor owned utilities, the UVM practices of rural electric membership corporations (REMCs) were described by Maureen Ferguson, Director of Government Relations for the Indiana Statewide Association of Rural Electric Cooperatives, Inc. Ms. Ferguson reported that 39 REMCs provide electricity in all 92 Indiana counties, supplying 12% of Indiana's electricity load. Like investor-owned utilities, REMCs regularly engage in UVM activities. However, because REMCs are owned and operated by their members, there is ongoing communication between an REMC's management and its members. As a result, REMCs receive few complaints from individual households concerning UVM practices.

Ms. Ferguson reported that UVM cycles for REMCs are typically three to four years. She also noted that UVM programs represent the second highest budget item for most REMCs. For example, Clark County REMC, which serves 21,000 meters, has a UVM budget of \$700,000. Given the considerable costs involved, when an REMC's UVM program requires the trimming or removal of what Ms. Ferguson called a "cycle buster" tree—one that is particularly important to a property owner—the REMC will, to the extent feasible, relocate or bury an overhead line if the property owner agrees to pay for the additional costs of doing so.

Thomas L. Nowaskie:

Ms. Ferguson introduced Thomas L. Nowaskie, Director of Operations for Western Indiana Energy Rural Electric Membership Corporation (WIN Energy REMC).<sup>19</sup> Mr. Nowaskie explained that WIN Energy REMC provides electricity in eight southwestern Indiana counties. Mr. Nowaskie noted that UVM programs often require REMCs to weigh the value of a particular tree to a property owner against the potential threats that the tree poses to the safety or reliability of a power line. Given the unique considerations involved in each situation, Mr. Nowaskie cautioned legislators against mandating "one size fits all" UVM standards.

Roger Merriman:

After Ms. Ferguson and Mr. Nowaskie concluded their testimony on behalf of REMCs, Roger Merriman, General Manager for Peru Utilities, spoke on behalf of municipally owned utilities. Mr. Merriman explained that Peru Utilities provides electricity to 11,000 customers in Peru, Indiana, and parts of rural Miami County. Mr. Merriman reported that due to this relatively small customer base and its efforts to communicate with customers, Peru Utilities has not experienced significant complaints about its UVM practices. He noted that most of

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<sup>19</sup>See Exhibit 11.

the homeowners who testified earlier about IPL's practices seemed frustrated by a lack of recourse. Still, like the other utility officials who testified before him, Mr. Merriman urged lawmakers not to impose statewide UVM standards. He questioned whether such standards would even apply to the vast majority of municipally owned utilities, noting that of the 72 municipal utilities in Indiana, only 16 are subject to the IURC's jurisdiction.

IURC Chairman David Lott Hardy:

After the utility representatives had concluded their remarks, Senator Hershman invited Chairman David Lott Hardy of the IURC to discuss UVM from a regulator's perspective. Chairman Hardy began by pointing out that the IURC administers no specific statute that governs UVM, nor has it adopted any rules to address such practices.

Chairman Hardy noted that the investigations into the 2003 blackout in the eastern United States attributed the outages to a number of factors, including equipment failure and a series of human errors, and not just one "rogue tree." Still, FERC has acted under its authority to regulate transmission lines to impose stricter UVM requirements on utilities. Like other state commissions, the IURC has the authority to regulate UVM practices only by "indirection"—for example, through its general reliability standards for regulated utilities. However, the IURC has no enforcement authority to ensure that utilities follow particular UVM standards. Furthermore, Chairman Hardy questioned whether the IURC could even play an effective role in utilities' UVM practices, given the agency's limited staff of 80 employees, none of whom are arborists.

In conclusion, Chairman Hardy reported that the IURC has not undertaken any particular actions with respect to UVM, because it has observed no particular problems. For example, during the three years from 2002 through 2004, 13% to 16% of all electricity outages reported by Indiana utilities were caused by trees or other vegetation. Even with respect to IPL, tree-related outages accounted for only 17% to 34% of the utility's outages during the same period.

**(3) Potential Regulation of Wind Power in Indiana:**

Senator Philip Boots:

Turning the Committee's attention to the next item on the agenda, Senator Hershman asked Senator Philip Boots to share his concerns about the potential regulation of wind power in Indiana. Senator Boots explained he asked the Legislative Council to assign this topic to the Committee after several constituents interested in wind power had contacted him with questions about how and whether the state intended to regulate the new wind facilities coming online across Indiana. For example, Senator Boots noted that the IURC has determined that wind farms in Indiana are public utilities but has declined to exercise jurisdiction over them. He questioned how these wind farms qualify as public utilities given that they do not supply electricity directly to Indiana customers. Senator Boots' constituents had also expressed concerns about reported plans by the Department of Local Government Finance to begin taxing wind towers as personal property.

Chairman David Lott Hardy:

Senator Hershman asked Chairman David Lott Hardy to discuss the IURC's regulatory

approach to wind farms in Indiana.<sup>20</sup> Chairman Hardy explained that the wind farms that the IURC has approved to be constructed and operated in Indiana are a type of merchant power plant. Merchant plants are constructed to generate electricity that is sold into the competitive wholesale electricity market, rather than directly to retail consumers. Unlike retail electricity suppliers, companies that construct merchant plants assume the full risk of the cost of the construction and operation of the plants. Because these companies do not seek to recover their costs through retail electric rates, their petitions for IURC approval usually request the IURC to either: (1) find that the facilities are not public utilities under Indiana law and therefore are not subject to IURC jurisdiction; or (2) decline to exercise jurisdiction over the facilities if the IURC does determine that the facilities are public utilities.

Chairman Hardy confirmed that with respect to each of the petitions to locate wind farms in Indiana, the IURC has determined that the proposed facilities are public utilities under Indiana law.<sup>21</sup> However, because the wind companies will not exercise any of the rights, powers, or privileges of public utilities and will not sell electricity to retail customers, recover any costs through rates, or exercise eminent domain, the IURC has declined jurisdiction over the construction and operation of the facilities. In each case, the IURC's review of and approach to each proposal was consistent with past decisions made with respect to merchant power plants. According to Chairman Hardy, in each case in which the IURC considers whether to decline to exercise its jurisdiction, it is required by statute to determine whether such declination is in the public interest.<sup>22</sup> In cases involving wind farms and other merchant power plants, the IURC's public-interest analysis involves the consideration of a number of issues, including a proposed plant's location, water needs, financing structure, access to fuel sources, proximity to transmission lines, and other factors.

While the IURC has declined to exercise jurisdiction over the construction and operation of Indiana's wind farms, its approval of such facilities has been conditioned on the companies' compliance with certain reporting requirements, including reporting on the status of construction and generation and providing notice of any affiliate transactions or ownership transfers. The companies are also required to meet certain financial assurance requirements. As noted by Chairman Hardy, such requirements are consistent with the IURC's past orders approving other types of merchant plants.

Senator Boots asked Chairman Hardy whether he knew what other states were doing with

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<sup>20</sup>See Exhibit 12.

<sup>21</sup>Under IC 8-1-2-1(a), "public utility . . . means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the . . . (2) production, transmission, delivery, or furnishing of heat, light, water, or power."

<sup>22</sup>IC 8-1-2.5-5(a) provides that "on the request of an energy utility . . . the commission may enter an order, after notice and hearing, that the public interest requires the commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both." IC 8-1-2.5-5(b) sets forth certain factors that the IURC must consider in determining whether the public interest will be served by its declination of jurisdiction over an energy utility or the utility's retail energy service.

respect to the regulation of wind farms. Chairman Hardy indicated that he was not aware of the practices of other states, but he indicated that he did not feel the IURC was hindering the development of wind power in Indiana, given the agency's declination of jurisdiction over all wind farms to date.

Ryan Brown:

Next, Senator Hershman invited testimony from Ryan Brown, Project Development Manager for Horizon Wind Energy.<sup>23</sup> Mr. Brown explained that Horizon Wind Energy is a subsidiary of the European energy giant Energias de Portugal. Headquartered in Houston, Horizon has regional offices across the country. Horizon's newly established Indianapolis office has three employees, and the company plans to hire more. Mr. Brown noted that Horizon is the first wind-energy company to open a permanent office in Indiana, although several other companies have built or are seeking to build wind farms in Indiana.

Mr. Brown described Horizon's proposed Meadow Lake wind facility in White County. Construction of the first phase is planned to begin in 2009 and would result in 200 MW of generation capacity. Later phases of construction could result in a total of up to 1,000 MW of capacity. Mr. Brown reported that Horizon has spent the past several years securing 50-year leases for most of the land it needs in White County. Power sale negotiations with electric utilities are now underway.

Turning to the issue of wind power regulation, Mr. Brown noted that in addition to requesting approval and regulatory relief from the IURC, wind companies also must comply with local zoning ordinances when siting their facilities. According to Mr. Brown, five Indiana counties have adopted wind-facility ordinances (i.e., Benton, Clinton, Tipton, Tippecanoe, and White Counties), and fifteen others are considering such ordinances. These ordinances establish rules for siting wind facilities, including application procedures, minimum turbine setback requirements, safety and installation standards, decommissioning plans, and preconstruction, construction, and post-construction requirements.

Finally, Mr. Brown noted that 27 states that have adopted renewable portfolio standards, which require electric utilities to deliver a minimum percentage of their power from renewable sources. According to Mr. Brown, wind developers are more likely to locate new facilities in those states. He encouraged lawmakers to adopt such a standard for Indiana.

Senator Hershman asked Mr. Brown how important federal tax credits are to the development of wind projects. Mr. Brown stated that the federal credits are crucial to ensuring continued investment in wind facilities. He noted that the federal production credit, which allows wind-energy producers to receive a 2.1¢ tax credit for each kilowatt hour of electricity produced, was recently extended through 2009.

Representative Behning asked what the average time is for a wind facility to become profitable after installation. Mr. Brown responded that in most cases a profit will not be realized until at least 15 years after installation, but that profitability depends on where a facility is located. For example, a wind developer in New York will recover its costs more quickly, because the electricity rates in that state are high. Mr. Brown further explained that almost all of the costs involved in developing a wind facility are capital costs. Once

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<sup>23</sup>See Exhibit 13.

construction is complete, operating and maintenance costs are not as significant.

Representative Frizzell asked what percentage of the country's electricity is supplied from wind energy. Mr. Brown reported that with 20,000 MW of wind capacity currently installed nationwide, wind energy accounts for 1.5% of the electricity generated in the United States. He indicated that the industry's goal is to have wind account for 20% of the nation's electricity by 2030, which would require about 300,000 MW of installed capacity.

When Mr. Brown had concluded his remarks, Senator Hershman announced that the two additional speakers scheduled to speak about wind power would return to address the Committee at its next meeting on October 16, 2009.

#### **(4) Energy Policy Options for Indiana:**

Before concluding the meeting, Senator Hershman invited students of Representative Matt Pierce to address the Committee concerning future energy policy options for Indiana.<sup>24</sup>

Anthony Baratta opened the presentation, explaining that he and his fellow students were participants in DePauw University's Environmental Policy Project, an eight-month program designed to provide nonpartisan energy and environmental policy information to Indiana legislators.

Mr. Baratta then introduced John Wellick, who outlined several energy policies recommended by the students as a result of their research. In particular, he urged state lawmakers to do the following: (1) adopt a state renewable electricity standard and a state renewable energy production tax credit; (2) revise Indiana's net metering and interconnection rules to allow more Indiana residents (including commercial interests) to generate their own electricity; and (3) investigate whether feed-in tariffs could help Indiana increase the amount of electricity generated from renewable sources.

Following Mr. Wellick's overview of the students' policy recommendations, Keelin Kelly discussed the role of electricity feed-in tariffs (FITs) in encouraging the development of renewable energy resources.<sup>25</sup> Mr. Kelly explained that FITs have two components: (1) ensuring interconnection to the electricity grid for renewable energy generators; and (2) setting a fixed rate, or tariff, that utilities must pay for electricity generated from renewable sources. Under a FIT program, a government agency would determine the rates to be paid for electricity generated from various renewable sources, based on the production costs for each source. The legislature would then approve the rates, giving them the force of law. Initially, rates would be set higher than the market price for the energy source, to encourage production. However, the rates would be set to decrease over time as the production of renewable energy becomes cheaper. Mr. Kelly described Germany's successful use of FITs to help grow the country's renewable energy industry and reduce carbon emissions from electricity production.

Finally, Tiffany Nichols presented a summary of the different renewable electricity standards adopted by other states.<sup>26</sup> She reminded legislators that a renewable electricity standard (RES) requires electric utilities to deliver a minimum percentage of their power from renewable energy sources. She encouraged the General Assembly to continue its

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<sup>24</sup>See Exhibit 14.

<sup>25</sup>See Exhibit 15.

<sup>26</sup>See Exhibit 16.

debate on adopting an appropriate RES for Indiana.

There being no further business on the agenda, Senator Hershman thanked all of the meetings' participants and adjourned the meeting at 4:40 p.m.